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Chief Clerk of the House

FILED MAR 11 2005

H.B. No. 2912

By: 

A BILL TO BE ENTITLED

AN ACT

relating to the performance of certain professional activities of
dietitians acting under medical orders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 701, Occupations Code, is amended by
adding a new section 701.354, to read as follows:

Sec. 701.354. MEDICAL PROTOCOLS; MEDICAL NUTRITION THERAPY;
LABORATORY TESTS. (a) Notwithstanding any other provision of law,
a licensed dietitian/nutritionist, acting within the scope of his
or her license and consistent with medical direction or
authorization as provided in this section, may accept, transcribe
into a patient's medical record or transmit verbal or
electronically-transmitted orders, including medication orders,
from a physician to other authorized health care professionals
relating to the implementation or provision of medical nutrition
therapy and related medical protocols for an individual patient
or group of patients. In a licensed health facility, the medical
direction or authorization shall be provided, as appropriate,
through a physician's order, standing medical order, standing
delegation order or medical protocol issued in accordance with
Subchapter A, Chapter 157, Occupations Code, and rules adopted by
the Board of Medical Examiners implementing the subchapter. In a

1 private practice setting, the medical direction or authorization
2 shall be provided, as appropriate, through the physician's order,
3 standing medical order, or standing delegation order of a
4 referring physician, in accordance with Subchapter A, Chapter
5 157, Occupations Code, and rules adopted by the Board of Medical
6 Examiners implementing the subchapter.

7 **(b)** Notwithstanding any other provision of law, a licensed
8 dietitian/nutritionist, acting within the scope of his or her
9 license and consistent with medical direction or authorization as
10 provided in this section, may order medical laboratory tests
11 relating to the implementation or provision of medical nutrition
12 therapy and related medical protocols for individual patients or
13 groups of patients. In a licensed health facility, the medical
14 direction or authorization shall be provided, as appropriate,
15 through a physician's order, standing medical order, standing
16 delegation order or medical protocol, issued in accordance with
17 Subchapter A, Chapter 157, Occupations Code, and rules adopted by
18 the Board of Medical Examiners implementing the subchapter. In a
19 private practice setting, the medical direction or authorization
20 shall be provided through the physician's order, standing medical
21 order, or a standing delegation order of the referring physician,
22 in accordance with Subchapter A, Chapter 157, Occupations Code,
23 and rules adopted by the Board of Medical Examiners implementing
24 the subchapter.

25 **SECTION 2. EFFECTIVE DATE.** This Act takes effect
26 immediately if it receives a vote of two-thirds of all the
27 members elected to each house, as provided by Section 39, Article

1 III, Texas Constitution. If this Act does not receive the vote
2 necessary for immediate effect, this Act takes effect
3 September 1, 2005.

HOUSE COMMITTEE REPORT

05 MAY -9 PM 11: 42
HOUSE OF REPRESENTATIVES

1st Printing

By: Davis of Harris, Dawson

H.B. No. 2912

Substitute the following for H.B. No. 2912:

By: Dawson

C.S.H.B. No. 2912

A BILL TO BE ENTITLED

AN ACT

relating to the performance of certain professional activities of
dietitians acting under medical orders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 701, Occupations Code, is
amended by adding Sections 701.354, 701.355, and 701.356 to read as
follows:

Sec. 701.354. MEDICAL PROTOCOLS. Notwithstanding any other
law, a person licensed under this chapter acting within the scope of
the person's license and consistent with medical direction or
authorization as provided by Section 701.356 may accept, transcribe
into a patient's medical record, or transmit verbal or
electronically transmitted orders, including medication orders,
from a physician to another authorized health care professional
relating to the implementation or provision of medical nutrition
therapy and related medical protocols for a patient or a group of
patients.

Sec. 701.355. LABORATORY TESTS. Notwithstanding any other
law, a person licensed under this chapter acting within the scope of
the person's license and consistent with medical direction or
authorization as provided by Section 701.356 may order medical
laboratory tests relating to the implementation or provision of
medical nutrition therapy and related medical protocols for a
patient or a group of patients.

1 Sec. 701.356. MEDICAL DIRECTION OR AUTHORIZATION. A
2 medical direction or authorization required by Section 701.354 or
3 701.355 must be issued in accordance with Subchapter A, Chapter
4 157, and rules adopted by the Texas State Board of Medical Examiners
5 under that subchapter and must be provided as follows:

6 (1) in a health care facility, through a physician's
7 order, standing medical order, standing delegation order, or
8 medical protocol; or

9 (2) in a private practice setting, through a
10 physician's order, standing medical order, or standing delegation
11 order of the referring physician.

12 SECTION 2. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2005.

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

5-9-05
(date)

Sir:

We, your COMMITTEE ON PUBLIC HEALTH

to whom was referred HB 2912 have had the same under consideration and beg to report back with the recommendation that it

- () do pass, without amendment.
- () do pass, with amendment(s).
- (x) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- (x) yes () no A fiscal note was requested.
- () yes (x) no A criminal justice policy impact statement was requested.
- () yes (x) no An equalized educational funding impact statement was requested.
- () yes (x) no An actuarial analysis was requested.
- () yes (x) no A water development policy impact statement was requested.
- () yes (x) no A tax equity note was requested.
- (x) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor _____

Joint Sponsors: _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

| | AYE | NAY | PNV | ABSENT |
|------------------------|-----|-----|-----|--------|
| Delisi, Chair | / | | | |
| Laubenberg, Vice-chair | / | | | |
| Coleman | / | | | |
| Dawson | / | | | |
| Jackson | / | | | |
| McReynolds | / | | | |
| Solis | | | | / |
| Truitt | / | | | |
| Zedler | / | | | |
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Total 8 aye
 0 nay
 0 present, not voting
 1 absent

Delisi
CHAIR

BILL ANALYSIS

C.S.H.B. 2912
By: Davis, John
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

End-Stage Renal Disease ("ESRD") facilities are licensed healthcare facilities which provide services and treatment for persons with kidney disease, including kidney dialysis services. The facilities are licensed and regulated by the Health Facility Licensing Compliance Division of the Texas Department of State Health Services ("DSHS").

In 2003, an ESRD facility in the greater Harris County area was sanctioned by DSHS for violating agency rules governing physician verbal or telephonic orders for patients receiving services in the facility. A Licensed Dietitian in the facility received a verbal telephone order from a physician for the administration of a nutrition-related drug to a patient, entered the order in the patient's medical record and transmitted the order to a facility nurse, who administered the drug by injection in accordance with the physician's orders. The acts of the physician, licensed dietitian, and registered nurse in the sanctioned ESRD were all performed in accordance with medical protocols approved by the medical staff of the facility.

DSHS found that the licensed dietitian had violated an agency rule requiring that "all verbal or telephone orders shall be received by a licensed nurse or physician assistant [and] Orders relating to a specific service . . . may be received by the licensed professional responsible for providing the service . . . and countersigned by the physician within 15 calendar days." The agency held that, the telephone order was not received by either a licensed nurse or physician assistant, nor was it received by the licensed professional responsible for providing the service; i.e., the nurse.

Similar conduct in other DSHS regions has not resulted in similar sanctions. The DSHS rule and sanction also may conflict with provisions of the Medical Practice Act authorizing physicians to delegate medical acts to non-physicians so long as the delegation meets the following general criteria: the act must be one which a physician would commonly delegate; the delegating physician must satisfy himself regarding the competence of the non-physician to perform the act;; the physician must provide adequate supervision in the performance of the act by the non-physician; and the physician must remain responsible for the acts of the non-physician.

The purpose of this Act is to clarify the authority of Licensed Dietitians to perform the act of receiving, entering into a patient's medical record and transmitting medical orders to other healthcare practitioners when the dietitian is acting under appropriate forms of delegated medical authority granted in compliance with the Medical Practice Act.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The substitute authorizes a licensed dietitian/nutritionist, acting within the scope of the dietitian/nutritionist's license and consistent with medical direction or authorization, to accept, transcribe into a patient's medical record, or transmit verbal or electronically transmitted orders, including medication orders, from a physician to another authorized healthcare professional which relate to medical nutrition therapy or related medical protocols, in both health care facility and private practice settings, so long as those acts are performed under the proper form of medical delegation of authority under the Medical Practice Act and rules of the Board of Medical Examiners.

The substitute similarly authorizes a licensed dietitian/nutritionist, acting within the scope of the dietitian/nutritionist's license and consistent with medical direction or authorization, to order medical laboratory tests relating to the implementation or provision of medical nutrition therapy and related medical protocols, in both health care facility and private practice settings, so long as those acts are performed under the proper form of medical delegation of authority under the Medical Practice Act and rules of the Board of Medical Examiners..

EFFECTIVE DATE

Upon passage, or, if the act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute drafts the legislation in Texas Legislative council form. The bill makes conforming and technical changes. The bill renumbers sections accordingly.

SUMMARY OF COMMITTEE ACTION

HB 2912

May 4, 2005 2:00PM or upon final adjourn./recess

- Considered in public hearing
- Committee substitute considered in committee
- Testimony taken in committee (See attached witness list.)
- Left pending in committee

May 9, 2005 Upon first recess

- Considered in formal meeting
- Committee substitute considered in committee
- Recommended to be sent to Local & Consent
- Reported favorably as substituted

3

WITNESS LIST

HB 2912

HOUSE COMMITTEE REPORT

Public Health Committee

May 4, 2005 - 2:00PM or upon final adjourn./recess

For: Ricks, Felicia (Self and Texas Dietetic Association
Renal Practice Group Council on Renal Nutrition of the
Nat'l Kidney Fndn)
Smith, RD, CSR, LD, Betty R. (Self and Texas Dietetic
Association Southeast Chapter Council on Renal
Nutrition - National Kidney Foundation)

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 9, 2005

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2912 by Davis, John (Relating to the performance of certain professional activities of dietitians acting under medical orders.), **Committee Report 1st House, Substituted**

| |
|---|
| No fiscal implication to the State is anticipated. |
|---|

It is assumed rules to implement the bill would be established using existing resources of affected agencies.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 537 Department of State Health Services, 503 Board of Medical Examiners

LBB Staff: JOB, CL, KF, BW

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 2, 2005

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2912 by Davis, John (Relating to the performance of certain professional activities of dietitians acting under medical orders.), **As Introduced**

| |
|---|
| No fiscal implication to the State is anticipated. |
|---|

The Department of State Health Services and Board of Medical Examiners indicate rules to implement the bill would be established using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 503 Board of Medical Examiners, 537 Department of State Health Services

LBB Staff: JOB, CL, KF, BW

for chief clerk use only

Bill or Resolution Number:

HB 2912

JOINT AUTHOR AUTHORIZATION

As primary author of HB 2912 I hereby authorize the following joint author(s):
(bill or resolution #)

Glenda Dawson

printed name of joint author #1

Glenda Dawson

signature of joint author #1

APR - 4 2005

printed name of joint author #2

signature of joint author #2

printed name of joint author #3

signature of joint author #3

printed name of joint author #4

signature of joint author #4

John E. Dalk

signature of primary author

John E. Dalk

4-4-05

date

H.B. No. 2912

A BILL TO BE ENTITLED
AN ACT

By 

Relating to the performance of certain professional activities
of dietitians actions under medical orders.

MAR 11 2005

Filed with the Chief Clerk

MAR 17 2005

Read first time and referred to Committee on Public Health

MAY 09 2005

Reported ___ favorably (_____)
(as substituted)

MAY 10 2005

Sent to Committee on (_____)
(Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting

Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Engrossed

Sent to Senate

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

Received from the House

Read and referred to Committee on _____

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)

Read second time, _____, and passed to third reading by (unanimous consent)
(a viva voce vote)
(_____ yeas, _____ nays)

Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

Read third time, _____, and passed by a (viva voce vote)
(_____ yeas, _____ nays)

Returned to the House

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

_____ Returned from the Senate (as substituted)
(with amendments)

_____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House conferees appointed: _____, Chair; _____,
_____, _____, _____

_____ Senate granted House request. Senate conferees appointed: _____, Chair;
_____, _____, _____, _____

_____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)

05 MAY -9 PM 11: 12

HOUSE OF REPRESENTATIVES